JUNE 2000 VOL. 5 ISSUE 5

LEGAL UPDATE

MICHIGAN STATE POLICE
TRAINING DIVISION

(517) 322-6704

Measuring the length of the truck does not include the coupling devices used to connect the trailers.

The question presented in this case was whether the coupling device that is used to connect the lead trailer of a semi with the pup trailer should be included in determining the vehicle's length under MCL 257.719. The court determined that the statute does not specifically address this issue, but that a 1989 Truck Guide distributed by the Michigan State Police Motor Carrier Division states that the coupling device is ***not included*** in the measurement of trailers. In the interest of uniformity, and the fact that the defendant in this case bought these devises in reliance on the truck guide, the court dismissed the citations. "The length of each trailer in a combination is measured from the front vertical portion of the trailer itself to the rear of the trailer, and the coupling device is not included in the measurement." People v Stone Transport, Inc., C/A No. 213894 (May 9, 2000)

Incest charges under CSC third may include sexual relations between a father and his step-daughter, but only when other theories are not applicable.

The defendant in this case was charged with third degree criminal sexual conduct against his twenty-one-year old step-daughter. MCL 750.520(1)(d) prohibits sexual penetration with another person if that "other person is related to the actor by blood or affinity to the third degree and the sexual penetration ***occurs under circumstances not otherwise prohibited by this chapter***" (emphasis added). At the preliminary exam, the evidence presented by the victim was that the incident was forceful. According to the victim, the suspect ripped her clothes and forced her into oral sex and sexual intercourse. The prosecutor charged the defendant with criminal sexual conduct using force or coercion as well as CSC III aggravated by affinity. The court held that there could be different theories under the charge but there could only be ***one*** charge. "In the present case, the district court erred in allowing the prosecutor to add CSC III aggravated *by affinity* as a separate charge to the criminal complaint rather than merely amending the preexisting CSC III." People v Goold, C/A No. 222490 (May 26, 2000)

There must be evidence to show a clear connection between the injury of a vulnerable adult and the action of a caretaker in order to make charges of Vulnerable Adult Abuse.

The defendant was a nurse at a long-term care facility. The victim suffered from health conditions that would occasionally cause her to become agitated and aggressive. At times she would hit, pinch, kick or slap other residents or staff. Due to this condition, she had to be placed in restraints on occasion. On one occasion, she was in the restraints when the defendant removed her. When asked why she removed the restraints, she stated that when she came on duty she saw another nurse who had been known to restrain people without good cause and there was no one around with whom she could consult about the proper action. After the victim was removed from the restraints, she got up, walked a short way before falling and breaking her hip. She subsequently died due to complications from her injuries.

The defendant was charged with one count of second degree vulnerable adult abuse under MCL 750.145n(2). To prove this charge, the prosecutor had to introduce evidence that the defendant engaged in a reckless act or reckless failure to act ***causing*** the injuries to the victim. The Court of Appeals held that there was no evidence presented that the defendant's act caused the victim's injuries. "There is no evidence that the act of releasing a

patient from restraints leads to any physical condition that could cause Parle to fall; the release merely allowed her to walk and therefore to move around the facility…The record simply fails to explain the physical forces that led to Parle's fall. We may speculate almost without end that Parle may have fallen because she was tired, emotionally distressed, confused, dizzy, took a misstep, or that someone brushed past her." People v Hudson, C/A No. 218497 (May 26, 2000)

Third degree child abuse is a specific intent crime, requiring the defendant could reasonably know their action would cause harm.

Defendant was convicted of third degree child abuse. The court held that a conviction requires "sufficient evidence to establish that defendant subjectively desired or knew that the prohibited result would occur." In this case, there was sufficient evidence to uphold her conviction. The mother spanked the daughter after the daughter was "getting real, real lippy." The spanking was hard enough to dislodge a blood clot in the daughter's nose and caused substantial bruising. People v Sherman-Huffman, C/A No. 217609 (May 26, 2000).

Criminal activity on the internet may include the charge of Sexually Abusive Material, but other charges may be limited if the "victim" is not an actual minor.

During an undercover investigation, an officer entered Internet chat rooms and posed as a fourteen-year-old girl named "Bekka" and began chatting with the defendant. During their correspondence, the defendant made sexual comments and sent a picture of his penis. He then stated he wanted to meet "Bekka" and take her back to his home where they could be alone for sexual activity. A meeting was set up where the defendant was arrested. He was charged with child sexually abusive activity, solicitation to commit third degree criminal sexual conduct (penetration with 13, 14, 15, year old), and attempted distribution of obscene material to a minor.

The Court of Appeals dismissed two out of the three charges against the defendant. Since the officer was an adult and not a minor, the court held that it was "legally impossible" for the CSC to occur. Also, there was no attempted distribution of obscene material to a minor since the officer was an adult. The court did allow the prosecutor to pursue the child sexually abusive material charge. "Because the child sexually abusive activity statute only requires mere preparation, rather than actual abusive activity, we are satisfied that a situation such as the case at bar comes within the provision of the statute." People v Thousand, C/A No. 220283 (May 12, 2000)

Changes in State Police Authority to serve/execute PPO process.

State police enabling legislation changed to include the authority to serve personal protection orders anytime and arrest an individual who is violating or has violated a personal protection order. PA 83 of 2000 (July 1, 2000).

Additional changes effective July 1, 2000, include the following:

- Domestic violence PPOs can be issued under the following circumstances:
  - Respondent cannot interfere with petitioner's education.
  - The respondent may be denied access to records regarding the parties' minor children that will disclose petitioner's personal or business address or phone numbers.
  - The respondent may be prohibited from stalking the petitioner.
- If a PPO is issued against a police officer, the officer's department must be notified.
- A law enforcement officer or court clerk may serve a PPO at anytime. The officer does need to file proof of oral service with the court issuing the order.
- A warrantless arrest for a PPO violation can be made when the person "is violating or has violated the order."
- The magistrate can set bond if the circuit or district court judges are not going to be available for 24 hours.